

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN RAYMOND SINCLAIR,	)	CASE NO.	C05-2130-MJP
	)		(CR99-466-MJP)
Petitioner,	)		
	)		
v.	)	REPORT AND RECOMMENDATION	
	)		
UNITED STATES OF AMERICA,	)		
	)		
Respondent.	)		
_____	)		

INTRODUCTION

Petitioner has filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Petitioner raises a sole claim that is based upon *United States v. Booker*, 125 S. Ct. 738 (2005). The government has filed a response, arguing, among other things, that *Booker* does not apply retroactively to cases, such as this one, on collateral review. After careful review of the parties' briefs, the court concludes that the government is correct in its argument, and petitioner's motion should be dismissed.

PROCEDURAL HISTORY

Petitioner pled guilty in 1999 to seven counts of bank robbery. (Doc. #6 in Case No.

01 CR99-466). In his plea agreement, petitioner agreed “not to ask or argue for less than 188  
02 months” imprisonment as his sentence. (Doc. #6 in Case No. C05-2130, Ex. A). The district  
03 court sentenced petitioner to 188 months in prison. The court cited petitioner’s “criminal history  
04 and violence” as the reason for imposing a sentence at the higher end of the sentencing range.  
05 (Doc. #15 in Case No. CR99-466). Petitioner did not file a direct appeal.

06 Petitioner filed the instant motion under § 2255 on December 28, 2005. (Doc. #1). On  
07 February 1, 2005, the government filed its response. (Doc. #6). The matter is now ready for  
08 review.

#### 09 DISCUSSION

10 In his § 2255 motion, petitioner raises a single claim for relief. He argues that his Sixth  
11 Amendment rights were violated when the court “made factual determinations . . . as to whether  
12 [petitioner’s] prior convictions qualified as predicate offenses to elevate his status and trigger a  
13 mandatory minimum sentence under the career criminal label.” (Doc. #1, Attachment). For  
14 support, petitioner relies upon the Supreme Court decision in *United States v. Booker*, 125 S. Ct.  
15 738 (2005) and related cases. In its response, the government argues, among other things, that  
16 *Booker* does not apply retroactively to cases, such as this, on collateral review.

17 The Supreme Court has not yet addressed whether *Booker* applies retroactively. However,  
18 the Ninth Circuit has held, in agreement with all the other circuit courts that have considered the  
19 question, that *Booker* does not apply retroactively to cases on collateral review. *See United States*  
20 *v. Cruz*, 423 F.3d 1119 (9th Cir. 2005), *cert. denied*, 126 S. Ct. 1181 (2006). Thus, petitioner  
21 may not rely upon *Booker* here, and his § 2255 motion should be dismissed. Because the court  
22 finds that the government’s position on the *Booker* question is correct, it is unnecessary to address

the government's alternative arguments.

CONCLUSION

For the foregoing reasons, the court recommends that petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence, be dismissed. A proposed Order reflecting this recommendation is attached.

DATED this 14th day of April, 2006.



Mary Alice Theiler  
United States Magistrate Judge